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SUBJECT: ARGENTINA 2007-2008 INCSR PART II: FINANCIAL CRIMES AND MONEY LAUNDERING

REF: STATE 137250

11. The following is Embassy Buenos Aires' input for the 2007-2008 International Narcotics Control Strategy Report (INCSR) part II -- Financial Crimes and Money Laundering. Marked-up text sent separately via email. Post POC is EconOff Chris Landberg (LandbergCA@State.Gov).

Begin Text:

Argentina is neither an important regional financial center nor an offshore financial center. Money laundering related to narcotics trafficking, corruption, contraband and tax evasion is believed to occur throughout the financial system, in spite of the efforts of the Government of Argentina (GOA) to stop it. The financial sector's continuing recovery from the 2001-02 financial crisis and post-crisis capital controls may have reduced the incidence of money laundering through the banking system. However, transactions conducted through nonbank sectors and professions, such as the insurance industry, financial advisors, accountants, notaries, trusts and companies, real or shell, remain viable mechanisms to launder illicit funds. Tax evasion is the predicate crime in the majority of Argentine money laundering investigations. Argentina has a long history of capital flight and tax evasion, and Argentines hold billions of dollars offshore, much of it legitimately earned money that was never taxed.

In 2006 and 2007, the National Coordination Unit in the Ministry of Justice and Human Rights became fully functional, managing the government's anti-money laundering and counter-terrorism finance efforts and representing Argentina to the Financial Action Task Force (FATF) and South American FATF (GAFISUD). The Attorney General's special investigative unit set up to handle money laundering and terrorism finance cases began operations in 2007. The Argentine Banking Superintendent's (part of Central Bank) proposal to create a specialized anti-money laundering and counter-terrorism finance examination program is awaiting authorization and is not yet operational.

The most noteworthy event in 2007 was the Argentine Congress' passage in June of anti-terrorism and counter-terrorism finance legislation (Law 26.268, "Illegal Terrorist Associations and Terrorism Financing"). The law, which entered into effect in mid-July, amends the Penal Code (Law

No. 25.246, "Cover-Up and Laundering of Assets Act") to criminalize acts of terror, terrorism financing, and money laundering for the purpose of financing terrorism. The new law technically provides the legal foundation for Argentina's financial intelligence unit (the Unidad de Informacion Financiera, or UIF), Central Bank, and other regulatory and law enforcement bodies to investigate and prosecute such crimes. Argentina joins Chile, Colombia, Mexico, and Uruguay as the only countries in Latin America to have counter-terrorism finance laws.

On September 11, 2007, President Nestor Kirchner signed into force the National Anti-Money Laundering and Counter-Terrorism Finance Agenda. The overall goal of this Agenda is to serve as a road-map for fine-tuning and implementing existing money laundering and terrorism finance laws and regulations. The Agenda's 20 individual objectives focus on closing legal/regulatory loopholes and improving interagency cooperation. The next challenge is for Argentine law enforcement and regulatory institutions, including the Central Bank and UIF, to implement the National Agenda and aggressively enforce the newly strengthened and expanded legal, regulatory, and administrative measures available to them to combat financial crimes.

Argentina's primary anti-money laundering legislation is Law 25.246 of May 2000 (noted above). Law 25.246 expanded the predicate offenses for money laundering to include all crimes listed in the Penal Code, sets a stricter regulatory framework for the financial sectors, and creates the UIF under the Ministry of Justice and Human Rights. The law requires customer identification, record keeping, and reporting of suspicious transactions by all financial entities and businesses supervised by the Central Bank, the

Securities Exchange Commission (Comision Nacional de Valores, or CNV), and the National Insurance Superintendency (Superintendencia de Seguros de la Nacion, or SSN). The law forbids institutions to notify their clients when filing suspicious transaction reports (STRs), and provides a safe harbor from liability for reporting such transactions.

Reports that are deemed by the UIF to warrant further investigation are forwarded to the Attorney General's Office.

As of September 30, 2006, the UIF had received 2851 reports of suspicious or unusual activities since its inception in 2002, forwarded 165 suspected cases of money laundering to prosecutors for review, and assisted prosecutors with 121 cases. There have been only two money laundering convictions in Argentina since money laundering was first criminalized in 1989, and none since the passage of Law 25.246 in 2000.

On March 29, 2006, the Argentine Congress passed Law 26.087, amending and modifying Law 25.246, in order to address Financial Action Task Force (FATF) concerns regarding the inadequacies in Argentine money laundering and terrorism financing legislation and enforcement. The FATF conducted a mutual evaluation of Argentina in October 2003, which was accepted at the FATF plenary in June 2004 and at the plenary meetings of the Financial Action Task Force for South America (GAFISUD) in July 2004. While the evaluation of Argentina showed the UIF to be functioning satisfactorily, it identified weaknesses in Argentina's anti-money laundering legislation, as well as the lack of terrorist financing legislation or a national anti-money laundering and counterterrorist financing coordination strategy.

Law 26.087 responds to many of the deficiencies noted by the FATF. It makes substantive improvements to existing law, including lifting bank, stock exchange and professional secrecy restrictions on filing suspicious activity reports; partially lifting tax secrecy provisions; clarifying which courts can hear requests to lift tax secrecy requests, and requiring decisions within 30 days. Law 26.087 also lowers the standard of proof required before the UIF can pass cases to prosecutors, and eliminates the so-called "friends and family" exemption contained in Article 277 of the Argentine Criminal Code for cases of money laundering, while narrowing the exemption in cases of concealment. Overall, the law

clarifies the relationship, jurisdiction, and responsibilities of the UIF and the Attorney General's Office, and improves information sharing and coordination. The law also reduces restrictions that have prevented the UIF from obtaining information needed for money laundering investigations by granting greater access to STRs filed by banks. However, the law does not lift financial secrecy provisions on records of large cash transactions, which are maintained by banks when customers conduct a cash transaction exceeding 10,000 pesos (approximately \$3,225).

The UIF, which began operating in June 2002, has issued resolutions widening the range of institutions and businesses required to report suspicious or unusual transactions to the UIF beyond those identified in Law 25.246. Obligated entities include the tax authority (Administracion Federal de Ingresos Publicos, or AFIP), Customs, banks, currency exchange houses, casinos, securities dealers, insurance companies, postal money transmitters, accountants, notaries public, and dealers in art, antiques and precious metals. The resolutions issued by the UIF also provide guidelines for identifying suspicious or unusual transactions. All suspicious or unusual transactions, regardless of the amount, must be reported directly to the UIF. Prior to the passage of Resolution 4/2005 in 2005, only suspicious or unusual transactions that exceeded 50,000 pesos (approximately \$16,130) had to be reported; prior to 2004, suspicious transactions that were below a 500,000 peso threshold were first reported to the appropriate supervisory body for pre-analysis. Obligated entities are required to maintain a database of information related to client transactions, including suspicious or unusual transaction reports, for at least five years and must respond to requests from the UIF for further information within 48 hours.

In September 2006, Congress passed Law 26.119, amending Law 25.246 to modify the composition of the UIF. The law

reorganized the UIF's executive structure, changing it from a five-member directorship with rotating presidency to a structure that has a permanent, politically-appointed president and vice-president. Law 26.119 also established a UIF Board of Advisors, comprised of representatives of key government entities, including the Central Bank, AFIP, the Securities Exchange Commission, the national counternarcotics secretariat (SEDRONAR), and the Justice, Economy, and

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Interior Ministries. The Board of Advisors' opinions on UIF decisions and actions are nonbinding.

The Central Bank requires by resolution that all banks maintain a database of all transactions exceeding 10,000 pesos, and periodically submit the data to the Central Bank. Law 25.246 requires banks to make available to the UIF upon request records of transactions involving the transfer of funds (outgoing or incoming), cash deposits, or currency exchanges that are equal to or greater than 10,000 pesos. The UIF further receives copies of the declarations to be made by all individuals (foreigners or Argentine citizens) entering or departing Argentina with over US\$10,000 in currency or monetary instruments. These declarations are required by Resolutions 1172/2001 and 1176/2001 issued by the Argentine Customs Service in December 2001. In 2003, the Argentine Congress passed Law 22.415/25.821, which would have provided for the immediate fine of 25 percent of the undeclared amount, and for the seizure and forfeiture of the remaining undeclared currency and/or monetary instruments. However, the President vetoed the law because it allegedly conflicted with Argentina's commitments to MERCOSUR (Common Market of the Southern Cone).

Argentina's Narcotics Law of 1989 authorizes the seizure of assets and profits, and provides that these or the proceeds of sales will be used in the fight against illegal narcotics trafficking. Law 25.246 provided that proceeds of assets forfeited under this law can also be used to fund the UIF.

Although Law 25.246 of 2000 expands the number of predicate offenses for money laundering beyond narcotics-related offenses and created the UIF, it limits the UIF's role to investigating only money laundering arising from six specific crimes. The law also defines money laundering as an aggravation after the fact of the underlying crime. A person who commits a crime cannot be prosecuted for laundering money obtained from the crime; only someone who aids the criminal after the fact in hiding the origins of the money can be guilty of money laundering. Another impediment to Argentina's anti-money laundering regime is that only transactions (or a series of related transactions) exceeding 50,000 pesos can constitute money laundering. Transactions below 50,000 pesos can constitute only concealment, a lesser offense.

Prior to the passage in 2007 of terrorist financing legislation, the Central Bank was the primary Argentine entity engaged in fighting such crimes. The Central Bank issued Circular A 4273 in 2005 (titled "Norms on 'Prevention of Terrorist Financing'"), requiring banks to report any detected instances of the financing of terrorism. The Central Bank regularly updates and modifies the original Circular. The Central Bank of Argentina also issued Circular B-6986 in 2004, instructing financial institutions to identify and freeze the funds and financial assets of the individuals and entities listed on the list of Specially Designated Global Terrorists designated by the United States pursuant to E.O. 13224. It modified this circular with Resolution 319 in October 2005, which expands Circular B-6986 to require financial institutions to check transactions against the terrorist lists of the United Nations, United States, European Union, Great Britain, and Canada. No assets have been identified or frozen to date.

On December 6, 2006, the U.S. Department of Treasury designated nine individuals and two entities that have provided financial or logistical support to Hizballah and operate in neighboring countries' territories that border Argentina (in the region commonly referred to as the Triborder Area between Argentina, Brazil and Paraguay). According to the designation, the nine individuals have provided financial support and other services for Specially

Designated Global Terrorist Assad Ahmad Barakat, who was previously designated by the U.S. Treasury in June 2004 for his support to Hizballah leadership. The two entities, Galeria Page and Casa Hamze, are located in Ciudad del Este, Paraguay, and have been utilized in generating or moving terrorist funds. The GOA joined the Brazilian and Paraguayan governments in publicly disagreeing with the designations, stating that the United States had not provided new information proving terrorist financing activity is occurring in the Triborder Area.

Working with the U.S. Department of Homeland Security's Office of Immigration and Customs Enforcement (ICE), Argentina has established a Trade Transparency Unit (TTU). The TTU examines anomalies in trade data that could be indicative of customs fraud and international trade-based money laundering. The TTU will generate, initiate, and support investigations and prosecutions related to trade-based money laundering and the movement of criminal proceeds across international borders. One key focus of the TTU, as well as of other TTUs in the region, will be financial crimes occurring in the Triborder Area, which is bound by Puerto Iguazu, Argentina, Foz do Iguacu, Brazil, and Ciudad del Este, Paraguay. The creation of the TTU was a positive step towards complying with FATF Special Recommendation VI on Terrorist Financing via alternative remittance systems. Trade-based systems such as hawala often use fraudulent trade documents and over and under invoicing schemes to provide counter valuation in value transfer and settling accounts.

The GOA remains active in multilateral counternarcotics and international anti-money laundering organizations. It is a member of the Organization of American States Inter-American Drug Abuse Control Commission (OAS/CICAD) Experts Group to

Control Money Laundering, FATF and GAFISUD. The GOA is a party to the 1988 UN Drug Convention, the UN International Convention for the Suppression of the Financing of Terrorism, the Inter-American Convention against Terrorism, and the UN Convention against Transnational Organized Crime. Argentina ratified the UN Convention against Corruption on August 28, 2006. Argentina participates in the "3 Plus 1" Security Group (formerly the Counter-Terrorism Dialogue) between the United States and the Triborder Area countries. The UIF has been a member of the Egmont Group since July 2003, and has signed memoranda of understanding regarding the exchange of information with a number of other financial intelligence units. The GOA and the USG have a Mutual Legal Assistance Treaty that entered into force in 1993, and an extradition treaty that entered into force in 2000. The Argentine government and Central Bank assert that they remain committed to freezing assets of terrorist groups identified by the United Nations if detected in Argentine financial institutions.

With passage of counter-terrorism financing legislation, strengthened mechanisms available under Laws 26.119, 26.087 and 25.246, the ratification of the UN International Convention for the Suppression of the Financing of Terrorism, a reorganized UIF, and enhanced enforcement capability via the Special Prosecutors Unit and Central Bank's specialized bank examination unit, Argentina has the legal and regulatory capability to combat and prevent money laundering and terrorism financing. Furthermore, the new national anti-money laundering and counter-terrorism finance agenda provides the structure for the government to improve existing legislation and regulation and enhance inter-agency coordination. The challenge now is for Argentine law enforcement and regulatory agencies and institutions, including the Justice Ministry, Central Bank and UIF, to implement the National Agenda and aggressively enforce the newly strengthened and expanded legal, regulatory, and administrative measures available to them to combat financial crimes.

The GOA could further improve the legal/regulatory structure by implementing the following reforms: enact legislation to expand the UIF's role to enable it to investigate money laundering arising from all crimes, rather than just six enumerated crimes; establish money laundering as an

independent offense; and eliminate the currently monetary threshold of 50,000 pesos required to establish a money laundering offense. To comply with FATF recommendations on the regulation of bulk money transactions, Argentina should review the legislation vetoed in 2003 to find a way to regulate such transactions consistent with its MERCOSUR obligations. Other continuing priorities are the effective sanctioning of officials and institutions that fail to comply with the reporting requirements of the law, the pursuit of a training program for all levels of the criminal justice system, and the provision of the necessary resources to the UIF to carry out its mission. There is also a need for increased public awareness of the problem of money laundering and its connection to narcotics, corruption and terrorism.

End Text.
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